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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/733,110	12/11/2003	Howard Sommerfeld	CRD 01145	7895
7590 01/12/2005				
JAMES RAY & ASSOCIATES		EXAMINER		
2640 Pitcairn Road		MCCARRY JR, ROBERT J		
Monroeville, PA 15146		ART UNIT PAPER NUMBER		
		3617		

DATE MAILED: 01/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/733,110

Applicant(s)

SOMMERFELD, HOWARD

Examiner

Robert J. McCarry, Jr.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## **DETAILED ACTION**

### ***Double Patenting***

Claims 1-17 are rejected under the judicially created doctrine of double patenting over claims 1, 3, 5, 7-10 and 12 of U. S. Patent No. 5,590,797 since the claims, if allowed, would improperly extend the "right to exclude" already granted in the patent.

The subject matter claimed in the instant application is fully disclosed in the patent and is covered by the patent since the patent and the application are claiming common subject matter, as follows: The instant application recites the features of a friction clutch mechanism for a type of draft gear. The prior art discloses the same friction clutch draft gear assembly as is evident from the figures and the claims. The claims of the prior art show the same features as the claims recited in the instant application. However, the claims of the prior art show the tapered surfaces to be tapered at an angle between 46.5 and 48.5 degrees while the claims of the application recite the tapered surfaces to be tapered at an angle between 49 and 50 degrees. It would have been obvious to one of ordinary skill in the art to see that this change in angle is minimal and would have been obvious to adjust the components slightly for fine-tuning of the device. The instant claims of the application also recite a preselected lubricating metal with at least 2% graphite. The prior art discloses a preselected metal lubricant for the various insert members. It would have been obvious to one of ordinary skill in the art to understand that since the prior art recites a preselected metal lubricant it is broader than the instant claims and therefore would encompass a metal lubricant with graphite.

Furthermore, there is no apparent reason why applicant was prevented from presenting claims corresponding to those of the instant application during prosecution of the application, which matured into a patent. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Duffy et al (US 5,590,797).

Duffy et al discloses all of the limitations for a friction clutch mechanism for a draft gear assembly. The instant application recites the features of a friction clutch mechanism for a type of draft gear. The prior art discloses the same friction clutch draft gear assembly as is evident from the figures and the claims. The claims of the prior art show the same features as the claims recited in the instant application. However, the claims of the prior art show the tapered surfaces to be tapered at an angle between 46.5 and 48.5 degrees while the claims of the application recite the tapered surfaces to be tapered at an angle between 49 and 50 degrees. It would have been obvious to one of ordinary skill in the art to see that this change in angle is minimal and would have been obvious to adjust the components slightly for fine-tuning of the device. The instant claims of the application also recite a preselected lubricating metal with at least 2%

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graphite. The prior art discloses a preselected metal lubricant for the various insert members. It would have been obvious to one of ordinary skill in the art to understand that since the prior art recites a preselected metal lubricant it is broader than the instant claims and therefore would encompass a metal lubricant with graphite.

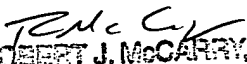
### **Conclusion**


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert J. McCarry, Jr. whose telephone number is (703) 305-0581. The examiner can normally be reached on Monday through Friday 8:00am to 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, S. Joseph Morano can be reached on (703) 308-0230. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

RJM  
January 7, 2005

  
ROBERT J. MCCARRY, JR.  
PATENT EXAMINER  
3617

  
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